

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

JOSHUA SITZER AND AMY)
WINGER, SCOTT AND RHONDA)
BURNETT, AND RYAN)
HENDRICKSON, on behalf of)
themselves and all others similarly situated,)

Plaintiffs,)

v.)

THE NATIONAL ASSOCIATION OF)
REALTORS, REALOGY HOLDINGS)
CORP., HOMESERVICES OF AMERICA,)
INC., BHH AFFILIATES, LLC, HSF)
AFFILIATES, LLC, THE LONG &)
FOSTER COMPANIES, INC., RE/MAX,)
LLC, and KELLER WILLIAMS REALTY,)
INC.,)

Defendants.)

No: 4:19-cv-00332-SRB

Judge Stephen R. Bough

DEFENDANT REALOGY HOLDINGS CORP. RULE 26(A)(1) DISCLOSURES

Pursuant to Fed. R. Civ. P. 26(a)(1), Defendant Realogy Holdings Corp. ("Realogy") makes the following disclosures to all parties. Realogy provides these disclosures subject to and without waiving any applicable privilege, doctrine, or right, including the attorney-client privilege, the work product doctrine, and all other rights and privileges recognized under the laws of the United States, the State of Missouri, and all relevant jurisdictions. By making these disclosures, Realogy does not concede the relevance or admissibility of any particular information, nor does it waive any objection to any discovery request that any party may propound in the course of litigation. Realogy makes these disclosures based on information currently and reasonably available to it. Realogy reserves the right to supplement, amend, or correct this information in accordance with Fed. R. Civ. P. 26(e) and to present additional

evidence to support its claims and defenses with any filing or during any proceeding in this action, including trial.

A. Individuals Likely to Have Discoverable Information

Realogy discloses the following individuals that are likely to have discoverable information that Realogy may use to support its claims and defenses in this case. Realogy employees may be contacted through Realogy counsel, Morgan, Lewis & Bockius LLP, 77 West Wacker Drive, Chicago, Illinois, 60601, (312) 324-1000. By identifying these individuals, Realogy does not consent to or authorize any communications by Plaintiffs' counsel with any employee of Realogy or any other individual or entity represented by counsel for Realogy, and does not consent to or authorize any communications otherwise prohibited by all applicable rules of professional conduct.

1. **Joshua Sitzler, Plaintiff**
Mr. Sitzler has knowledge of the allegations and claimed damages set forth in the First Amended Class Action Complaint (the "Complaint"). Mr. Sitzler presumably can be contacted through Plaintiffs' counsel.
2. **Amy Winger, Plaintiff**
Ms. Winger has knowledge of the allegations and claimed damages set forth in the Complaint. Ms. Winger presumably can be contacted through Plaintiffs' counsel.
3. **Scott Burnett, Plaintiff**
Mr. Burnett has knowledge of the allegations and claimed damages set forth in the Complaint. Mr. Burnett presumably can be contacted through Plaintiffs' counsel.
4. **Rhonda Burnett, Plaintiff**
Ms. Burnett has knowledge of the allegations and claimed damages set forth in the Complaint. Ms. Burnett presumably can be contacted through Plaintiff's counsel.
5. **Ryan Hendrickson, Plaintiff**
Mr. Hendrickson has knowledge of the allegations and claimed damages set forth in the Complaint. Mr. Hendrickson presumably can be contacted through Plaintiffs' counsel.

6. **All professionals, including real estate professionals, attorneys, and all others, who assisted any Plaintiff with any real estate transaction**
These individuals may have knowledge about each Plaintiff's real estate transaction and any negotiations with the Plaintiff, and his or her broker or agent, and/or with the buyer of Plaintiff's real estate, and the buyer's broker or agent, and any communications and negotiations among all or some subset of those persons. Contact information for such individuals is unknown at this time.
7. **All professionals, including real estate professionals, attorneys, and all others, who assisted the actual or prospective buyers of any Plaintiff's real estate transactions**
These individuals may have knowledge about each buyer's real estate transaction with Plaintiff and any negotiations with the Plaintiff, and his or her broker or agent, and/or with the buyer's broker or agent, and any communications and negotiations among all or some subset of those persons. Contact information for such individuals is unknown at this time.
8. **Representatives of the Heartland MLS**
These individuals may have knowledge of the Heartland MLS's adoption and implementation, if any, of the rules in NAR's Handbook on Multiple Listing Policy ("Handbook"), NAR's Code of Ethics, and NAR's Standards of Practice, and the use of its MLS for disclosure of commissions. Contact information for such individuals is unknown at this time.
9. **Representatives of the Mid America Regional Information System ("MARIS") MLS**
These individuals may have knowledge of the MARIS MLS's adoption and implementation, if any, of the rules in NAR's Handbook, NAR's Code of Ethics, and NAR's Standards of Practice, and the use of its MLS for disclosure of commissions. Contact information for such individuals is unknown at this time.
10. **Representatives of the Southern Missouri Regional MLS**
These individuals may have knowledge of the Southern Missouri Regional MLS's adoption and implementation, if any, of the rules in NAR's Handbook, NAR's Code of Ethics, and NAR's Standards of Practice, and the use of its MLS for disclosure of commissions. Contact information for such individuals is unknown at this time.
11. **Representatives of the Columbia Board of Realtors MLS**
These individuals may have knowledge of the Columbia Board of Realtors MLS's adoption and implementation, if any, of the rules in NAR's Handbook, NAR's Code of Ethics, and NAR's Standards of Practice, and the use of its MLS for disclosure of commissions. Contact information for such individuals is unknown at this time.

12. **Representatives of real estate associations operating in the Subject MLSs**
These individuals may have knowledge regarding the adoption, implementation, and enforcement, if any, of the rule Plaintiffs refer to as the “Adversary Commission Rule,” and operation of the local MLS. Contact information for such individuals is unknown at this time.
13. **Representatives of the National Association of REALTORS® (NAR)**
These individuals may have knowledge of NAR’s Handbook, NAR’s Code of Ethics, and NAR’s Standards of Practice; the adoption and history of the rule referred to by Plaintiffs as the “Adversary Commission Rule”; the 2015 report referenced in ¶ 14 of the Complaint; availability of MLS data to third-party websites and consumers, as referred to in ¶ 103 of the Complaint; and Realogy’s lack of involvement in NAR. Such representatives may be contacted through NAR’s counsel.
14. **Representatives of other Corporate Defendants**
These individuals may have knowledge of the absence of any agreement among Defendants regarding the rule Plaintiffs refer to as the “Adversary Commission Rule.” Such representatives may be contacted through each Defendant’s respective counsel.
15. **Alexander Perriello, *Chairman Emeritus, Realogy Franchise Group and former President and Chief Executive Officer, Realogy Franchise Group***
Mr. Perriello may have knowledge about Realogy’s involvement or relationship with NAR and the absence of any agreement among Defendants, alleged co-conspirators, or anyone else regarding the rule Plaintiffs refer to as the “Adversary Commission Rule.” Mr. Perriello may be contacted through counsel for Realogy.
16. **John Peyton, *President and Chief Executive Officer, Realogy Franchise Group***
Mr. Peyton may have knowledge about Realogy’s involvement or relationship with NAR and the absence of any agreement among Defendants, alleged co-conspirators, or anyone else regarding the rule Plaintiffs refer to as the “Adversary Commission Rule.” Mr. Peyton may be contacted through counsel for Realogy.

17. **Steven DiNapoli, Vice President of Contract Administration, Realogy Franchise Group**
Mr. DiNapoli may have knowledge about Realogy's franchise administration, including contract negotiation and administration with Realogy's franchisees. Mr. DiNapoli may be contacted through counsel for Realogy.
18. **James Dohr, President, Brokerage Management for NRT LLC's operations in St. Louis, MO**
NRT LLC is a subsidiary of Realogy Corporation. Mr. Dohr may have knowledge about NRT's operations in the Subject MLSs alleged in this Action. Mr. Dohr may be contacted through counsel for Realogy.
19. **Any witness identified by any other party**
These individuals may have knowledge of the allegations and claimed damages set forth in the Complaint; the lack of any agreement among Defendants regarding the rule Plaintiffs refer to as the "Adversary Commission Rule;" and defenses to the Complaint.

In addition to the individuals listed above, Realogy may rely upon one or more additional individuals that are identified by the parties during the course of discovery, as well as expert witnesses to be identified in accordance with any scheduling orders, to support Realogy's claims and defenses. Realogy may also rely on additional witnesses necessary for impeachment or rebuttal.

B. Documents, Electronically Stored Information and Tangible Things Realogy May Use to Support Its Claims and Defenses

Based on information currently and reasonably available to Realogy, Realogy identifies the following categories of non-privileged documents, electronically stored information, and tangible things within Realogy's possession, custody, or control that it may use to support its claims and defenses, other than solely for impeachment.

1. Form franchise agreements for the geographic areas covered by the Subject MLSs.
2. Communications between Realogy employees, if any, regarding NAR, NAR rules, Realogy's lack of control over franchisees, sub-franchisors, and sub-franchisees, and other allegations of the Complaint.

3. Internal reports and assessments regarding the real estate industry, including competition, methods for selling homes, the home sale and purchase process, and compensation for real estate services.
4. Third-party reports and assessments regarding the real estate industry, including methods for selling homes, the home sale and purchase process, and compensation for real estate services.
5. Data sources pertaining to residential real estate transactions within the MLS areas alleged to be relevant in the Complaint.
6. Residential real estate broker and agent learning materials, manuals, policies, and guidelines.
7. Closing documents for each of the Plaintiff's real estate transactions that Realogy participated in.

C. Computation of Damages

Realogy does not allege any damages at this time but reserves the right to do so, as well as seek the right to seek any costs or attorneys' fees incurred in connection with its defense of this action. Further, Realogy denies liability to Plaintiffs for any damages.

D. Applicable Insurance Agreements

Based on Realogy's present insurance and applicable deductibles, no insurance carrier would be liable to satisfy part or all of any likely judgment that may be entered in this action, or to indemnify or reimburse for payments made to satisfy any likely judgment.

Dated: September 20, 2019

Respectfully submitted,

/s/ Megan J. Ochs

Megan J. Ochs
mochs@armstrongteasdale.com
Karrie Clinkinbeard
kclinkinbeard@armstrongteasdale.com
ARMSTRONG TEASDALE LLP-KCMO
2345 Grand Boulevard
Suite 1500
Kansas City, MO 64108
(816) 221-3240

Kenneth Michael Kliebard, *pro hac vice*
kenneth.kliebard@morganlewis.com
MORGAN LEWIS & BOCKIUS LLP
77 West Wacker Drive
Chicago, IL 60601-5094
(312) 324-1000

Stacey Anne Mahoney, *pro hac vice*
stacey.mahoney@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
101 Park Avenue
New York, NY 10178
(212) 309-6000

Counsel for Realogy Holdings Corp.

CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2019, I served Defendant Realogy Holding Corp.'s

RULE 26(a)(1) disclosures on the following counsel of record via email:

PLAINTIFFS

Amy R. Jackson
amy@williamsdirks.com
Courtney Marie Stout
cstout@williamsdirks.com
Eric L. Dirks
dirks@williamsdirks.com
Matthew Lee Dameron
matt@williamsdirks.com
WILLIAMS DIRKS DAMERON LLC
1100 Main St, Suite 2600
Kansas City, MO 64105
(816) 945-7118

Erin D. Lawrence
erin@boulware-law.com
Jeremy M. Suhr
jeremy@boulware-law.com
Brandon J.B. Boulware
brandon@boulware-law.com
BOULWARE LAW LLC
1600 Genessee, Suite 416
Kansas City, MO 64102
(816) 492-2826

NATIONAL ASSOCIATION OF REALTORS

Charles W. Hatfield
chuck.hatfield@stinsonleonard.com
Alex Barrett
alexander.barrett@stinson.com
STINSON LLP – JC
230 W McCarty St
Jefferson City, MO 65101
(573) 636-6263

HOMESERVICES OF AMERICA, INC.

Brian C. Fries
bfries@lathropgage.com
LATHROP GAGE LLP
2345 Grand Ave, Suite 2200
Kansas City, MO 64108
(816) 292-2000

Matthew B. Barr
matthew.barr@btlaw.com
Matthew T. Ciulla
matthew.ciulla@btlaw.com
Karoline E. Jackson
kjackson@btlaw.com
Robert D. MacGill
robert.macgill@btlaw.com
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, IN 46204
(317) 231-6498

Jay N. Varon
jvaron@foley.com
Jennifer M. Keas
jkeas@foley.com
FOLEY AND LARDNER LLP
3000 K Street NW, Suite 600
Washington, DC 20007
(202) 672-5436

KELLER WILLIAMS REALTY, INC.

David R. Buchanan
dbuchanan@bjpc.com
BROWN & JAMES, PC
2345 Grand Blvd, Suite 2100
Kansas City, MO 64108
(816) 472-0800

Gregory Dickinson
gdickinson@schiffhardin.com
Jack R. Bierig
jbierig@schiffhardin.com
SCHIFF HARDIN LLP
233 S Wacker, Suite 6600
Chicago, IL 60606
(312) 258-5641

RE/MAX LLC
Danne W. Webb
dwebb@hab-law.com
HORN AYLWARD & BANDY, LLC
2600 Grand Blvd., Suite 1100
Kansas City, MO 64108
(816) 421-0700

Paula W. Render, *pro hac vice*
prender@jonesday.com
Erin L. Shencopp, *pro hac vice*
eshencopp@jonesday.com
Odesho Hasdoo, *pro hac vice*
ehasdoo@jonesday.com
JONES DAY
77 W Wacker, Suite 3500
Chicago, IL 60605
(312) 782-3939

Anna P. Hayes
anna.hayes@hklaw.com
David C. Kully
david.kully@hklaw.com
HOLLAND & KNIGHT LLP
800 17th St NW, Suite 1100
Washington, DC 20006
(202) 469-5441

Martin G. Durkin, Jr.
martin.durkin@hklaw.com
Timothy Ray
timothy.ray@hklaw.com
William F. Farley
william.farley@hklaw.com
HOLLAND & KNIGHT LLP
150 N Riverside Plaza, Suite 2700
Chicago, IL 60606
(312) 263-3600

/s/ Megan J. Ochs

Megan J. Ochs

*An Attorney for Defendant Realogy
Holdings Corp.*